

EMERGENCY Chapter NR 345

Effective August 24, 2004

DREDGING IN NAVIGABLE WATERWAYS

NR 345.01 Purpose. The purpose of this chapter is to establish reasonable procedures and limitations for exempt activities, general permits and individual permits for removal of material from the beds of navigable waterways as regulated under s. 30.20, Stats., in order to protect the public rights and interest in the navigable, public waters of the state as defined in s. 30.10, Stats.

NR 345.02 Applicability. This chapter applies to removal of material from the bed of navigable waterways under ss. 30.20(1), (1g)(b), (1m), (1t) and (2), Stats. Any person that intends to remove material from the bed of a navigable waterway shall comply with all applicable provisions of this chapter and any permit issued under this chapter.

Note: For most dredging projects, the discharge of carriage return water is regulated by ch. 283, Stats., and requires a Wisconsin pollutant discharge elimination system (WPDES) permit. Similarly, for most dredging projects, the disposal of dredged material is regulated by ch. 289, Stats., and requires authorization under ch. NR 500. In accordance with 2003 Wisconsin Act 118, removal of material from non-navigable waterways is no longer regulated under s. 30.20, Stats.

NR 345.03 Definitions. (1) "Area of special natural resource interest" has the meaning in s. 30.01(1am), Stats, and as identified by the department in s. NR 1.05.

Note: "Area of special natural resource interest" means any of the following:

- (a) A state natural area designated or dedicated under ss. 23.27 to 23.29.
- (b) A surface water identified as a trout stream by the department under NR 1.02(7).
- (bm) A surface water identified as an outstanding or exceptional resource water under s. 281.15.
- (c) An area that possesses significant scientific value, as identified by the department in NR 1.05.

Information and lists can be obtained by contacting the department, or found on the department's website at www.dnr.wi.gov, under the topic "Waterway and Wetland Permits".

(2) "De minimus" activity means the manual dredging, for non-commercial purposes, of less than 100 square feet and less than one foot deep in a calendar year from a specific waterbody and disturbance of bottom material during the manual removal of aquatic plants that meet the requirements of s. NR. 109.06(2).

(3) "Department" means the department of natural resources.

(4) "Dredged material" means any material removed from the bed of a navigable waterway by dredging.

(5) "Dredging" means any part of the process of the removal of material from the bed of a navigable waterways, transport of the material to a disposal, rehandling or treatment facility; treatment of the material; discharge of carriage or interstitial water; and disposal of the material.

(6) "Hazardous substance" has the meaning specified in s. 289.01(11), Stats.

Note: Notwithstanding substances that meet the definition of hazardous substances in s. 289.01(11), Stats., for the purpose of removing material from the bed of navigable streams and lakes, "hazardous substances" includes all chemicals present at concentrations at, or greater than the *threshold effect concentration* as published in Consensus Based Contaminated Sediment Evaluation (DNR 2001).

(7) "Manual dredging" means removal or disturbance of bottom material by hand or using a hand-held device without the aid of external or auxiliary power. Manual dredging is often associated with the collection of aquatic insects for bait, removal of nuisance vegetation or debris and the panning for gold or

other material. For the purpose of ch. 30, Stats., manual dredging does not include “de minimus” activities as defined in sub. (2).

(8) “Navigable waterway” means any body of water with a defined bed and bank, which is navigable under the laws of the state. In Wisconsin, a navigable body of water is capable of floating the lightest boat or skiff used for recreation or any other purpose on a regularly recurring basis.

(9) “Ordinary high water mark” means the point on the banks or shore up to which the presence and action of water is so continuous as to leave a distinct mark either by erosion, destruction of terrestrial vegetation or other easily recognizable characteristics.

(10) “Previously dredged area” means an area below the ordinary high water mark of a navigable waterway from which material was historically removed.

(11) “Riparian” means an owner of land abutting a navigable waterway.

(12) “Utility crossing” means dredging by plow, vibratory plow or open trench methods, below the ordinary high water mark of a navigable waterway for the installation of cables, conduits or pipelines by an entity providing service for conveying any fluids, gases, electricity and communications or other public or private utility functions.

NR 345.04 Dredging. (1) EXEMPTIONS. (a) *Procedures.* Exemptions shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* The dredging of a farm drainage ditch which was not a navigable stream before ditching that meets the standards in par. (c), is exempt from the permit requirements of s. 30.20(1) and (2), Stats., in accordance with s. 30.20(1g)(a)1., Stats. Manual dredging that meets the standards in par. (d), is exempt from permit requirements of s. 30.20(1) and (2), Stats., in accordance with s. 30.20(1g)(b)2., Stats.

(c) Standards for dredging of a farm drainage ditch which was not a navigable stream before ditching.

1. The project is located in a navigable stream that does not have stream history.
2. The applicant has notified the department of the proposed project 10 days prior to dredging.
3. The dredging may not have a long-term adverse effect on cold-water fishery resource or may not destroy cold water or warm water fish spawning beds or nursery areas.
4. The dredged material may not be temporarily or permanently placed in a wetland, floodplain or below the ordinary high water mark of a navigable waterway.
5. The person conducting the dredging is the riparian owner or has permission of the riparian owner to remove bottom material.

(d) *Standards for manual dredging activities.* 1. The dredging operation meets the definition of manual dredging in s. NR 345.03(7).

2. The dredging may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05, or where there are public rights features as defined in s. NR 1.06, or in perennial tributaries to surface waters identified as trout streams by the department in s. NR 1.02(7).

3. For each riparian property, the amount of bottom material dredged from a specific waterbody may not exceed 100 square feet in surface area and one foot in depth in a calendar year.

4. The material may not contain hazardous substances as defined in s. NR 345.03(6).

5. After or during dredging, the removed material may not be temporarily or permanently placed in a wetland, floodplain or below the ordinary high water mark of a navigable waterway.

6. No fill may be placed below the ordinary high water mark of a navigable waterway.

7. Mechanical equipment may not be operated below the ordinary high water mark or on the bed of a navigable waterway.

8. Erosion control measures shall meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook.

Note: Information on how to obtain this publication can be found by contacting the department or found on the department's website at www.dnr.wi.gov, under the "Runoff Management" program.

9. The applicant is the riparian owner or has permission of the riparian owner to remove bottom material.

Note: When the state is the riparian property owner, the requirements of ch. NR 45 shall be met.

(e) Standards for dredging necessary to place or maintain an exempt structure under s. 30.20(1g)(b)1., Stats., are contained in the rules that describe the standards for those exempt structures.

Note: Chapters NR 320, 323, 328 and 329 contain rules regarding various exempt activities including culvert replacement, habitat structures, riprap replacement, intake and outfall structures and dry fire hydrants.

(f) Activities which do not meet the standards in par. (c) or (d) or are determined ineligible for an exemption by the department shall require a general permit or individual permit.

(2) GENERAL PERMITS. (a) *Procedures.* General permits shall be processed according to the procedures in ch. NR 310.

(b) *Projects affecting threatened or endangered species.* If the department determines that a dredging proposal submitted under this section has the potential to impact an endangered or threatened species in accordance with s. 29.604, Stats., the application shall be deemed incomplete. The department may not consider the application complete or issue a general permit until the applicant submits documentation to demonstrate one of the following:

1. The dredging project avoids impacts to the endangered or threatened species in accordance with s. 29.604, Stats.

2. The dredging project has received an incidental take authorization under s. 29.604, Stats.

3. If the applicant modifies their dredging project plans to meet the requirements of subd. 2., the modified plans shall be submitted before the department can consider the application complete or issue a general permit.

(c) *Applicable activities.* Dredging that meets the standards in par. (d) or (e) are eligible for a general permit under ss. 30.20(1t)(b) and 30.206, Stats. Dredging that meets the standards in par. (f) or (g) is eligible for a general permit under ss. 30.20(1t)(a) and (am) and 30.206, Stats.

(d) *Standards for installation of utility crossings.* Dredging to install a utility crossing is eligible for a general permit subject to the following limitations:

1. The location of the utility crossing shall be located to reduce environmental impacts by minimizing the disturbance of the following: adjacent wetland corridors, bank with slopes greater than 3 to 1 and fish and wildlife habitat within the waterway.

2. To protect fish habitat during spawning seasons, the dredging may not occur during the following time periods:

a. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, September 15 through May 15.

b. For all waters not identified in this subd. 2.a. and located south of state highway 29, March 15 through May 15.

c. For all waters not identified in this subd. 2.a. and located north of state highway 29, April 1 through June 1.

d. The applicant may request that the requirement in this subd. 2.a., b. or c. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed dredging project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

3. After or during dredging, the removed material may not be temporarily or permanently placed in a wetland, floodplain or below the ordinary high water mark of a navigable waterway.

4. Manual dredging shall be conducted to minimize the re-suspension of sediment to the maximum extent practicable in accordance with the following:

a. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, total suspended solid concentrations may not exceed 40 mg/L.

b. For all waters not identified in this subd. 3.a., the total suspended solid concentrations may not exceed 80 mg/L.

5. The general permit may authorize up to 10 waterway crossings that are part of a single project.

6. The size of the open trench or plow channel may not exceed a maximum of 36 inches in width in perennial streams and 60 inches in intermittent streams where no flow is present during construction.

7. The dredging shall conform to the dimensions and elevations shown on the application.

8. Erosion control measures shall meet or exceed the standards in the most current version of the Wisconsin Construction Site Best Management Practices Handbook.

Note: Information on how to obtain this publication can be found by contacting the department or found on the department's website at www.dnr.wi.gov, under the "Runoff Management" program.

9. All equipment used for the project shall be designed and properly sized to minimize to the extent practicable, the amount of sediment that is re-suspended.

10. Any area within 75 feet of the ordinary high water mark, where topsoil is exposed during construction shall be stabilized within 24 hours to prevent soil from being eroded and washed into the waterway.

11. During construction and installation of the utility crossing, the entire volume of stream flow shall be maintained downstream from the project site.

12. The trench excavation, filling and installation of utility crossing the below the ordinary high mark shall be completed within a 6 hour period.

13. During excavation of the trench, dredged material may be temporarily stockpiled in an upland area provided best management practices are installed to prevent the material from re-entering navigable waters.

14. The dredged material may not be temporarily or permanently placed in a wetland or below the ordinary high water mark of a navigable waterway. The dredged material may not be permanently placed in within a floodplain.

15. In perennial streams, clean, washed gravel or crushed stone or clean river stone originally removed from the dredge area, shall be used as backfill material for the dredged trench to replace the excavated material. In intermittent streams with no flow present, the originally removed material may be used as backfill material for the dredged trench if the disturbed sited is immediately stabilized.

16. When the dredging is complete, the streambed contours shall be the same as the pre-construction contours.

17. All equipment used for the project shall be adequately de-contaminated for invasive and exotic species prior to use and after use. All equipment that comes in contact with infested waters, including but not limited to tracked vehicles, barges, boats, silt or turbidity curtain, sheet pile and pumps, shall be thoroughly disinfected.

18. The applicant is the riparian owner or has permission of the riparian owner to remove bottom material.

Note: When the state is the riparian property owner, the requirements of ch. NR 45 shall be met.

(e) *Standards for manual dredging.* A general permit, subject to the following limitations may authorize manual dredging activities that do not meet the exemption standards in s. NR 345.04(1)(d).

1. The dredging operation meets the definition of manual dredging in s. NR 345.03(7).

2. To protect fish habitat during spawning seasons, the manual dredging may not occur during the following time periods:

a. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, September 15 through May 15.

b. For all waters not identified in this subd. 2.a. and located south of state highway 29, March 15 through May 15.

c. For all waters not identified in this subd. 2.a. and located north of state highway 29, April 1 through June 1.

d. The applicant may request that the requirement in this subd. 2.a., b. or c. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed dredging project, and that the local department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

3. The applicant shall provide information that the dredged material does not contain any hazardous substance as follows:

a. Through the collection and laboratory analysis of the dredged material in compliance with ch. NR 347; or

b. Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with ch. NR 347; or

c. By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways.

4. During or after dredging, the removed material may not be temporarily or permanently placed in a wetland, floodplain or below the ordinary high water mark of a navigable waterway.

5. Erosion control measures shall meet or exceed the standards in the Wisconsin Construction Site Best Management Practices Handbook.

Note: Information on how to obtain this publication can be found by contacting the department or found on the department's website at www.dnr.wi.gov, under the "Runoff Management" program.

6. For each riparian property, the amount of bottom material removed from a specific waterbody may not exceed 10 cubic yards in a calendar year.

7. In waterways with flows less than 2 linear feet per second, a silt curtain shall be in the waterway around the dredging site. Silt curtain shall be left in place until the project has been completed. The silt curtain shall be inspected daily to insure sedimentation is being contained.

8. The applicant is the riparian owner or has permission of the riparian owner to remove bottom material.

Note: When the state is the riparian property owner, the requirements of NR 45 shall be met.

(f) *Standards for maintenance dredging of previously dredged areas.* Maintenance dredging of material from an area from which material has previously been removed is eligible for a general permit subject to the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05, or where there are public rights features as defined in s. NR 1.06.

2. To protect fish habitat during spawning seasons, the dredging may not occur during time periods established in a prior authorization under s. 30.20, Stats. If no prior authorization exists, dredging may not occur during the following time periods:

a. For trout streams identified under s. NR 1.02(7) and perennial tributaries to those trout streams, September 15 through May 15.

b. For all waters not identified in this subd. 2.a. and located south of state highway 29, March 15 through May 15.

c. For all waters not identified in this subd. 2.a. and located north of state highway 29, April 1 through June 1.

d. The applicant may request that the requirement in this subd. 2.a., b. or c. be waived by the department on a case-by-case basis, by submitting a written statement signed by the local department fisheries biologist, documenting consultation about the proposed dredging project, and that the local

department fisheries biologist has determined that the requirements of this paragraph are not necessary to protect fish spawning for the proposed project.

3. The total amount of material removed from the area shall be less than 3000 cubic yards or, if greater than 3000 cubic yards, a previous environmental assessment or environmental impact statement shall meet the requirements of s. NR. 150.20(2)(c).

4. Dredging may not exceed the volume or extend beyond the dimensions of the previously constructed dredge project.

5. The applicant shall provide information that the dredged material does not contain any hazardous substance as follows:

a. Through the collection and laboratory analysis of the dredged material in compliance with ch. NR 347; or

b. Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with ch. NR 347; or

c. By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways.

6. The applicant has provided information that the area meets the requirements of "previously dredged area" as follows:

a. The applicant can demonstrate that previous removal of material was previously authorized by the department; or

b. The applicant can demonstrate historical information documenting the previous removal of material including the date of removal, the volume of material removed and location of the material disposal.

7. Bottom materials shall be removed and transported by equipment which is designed and properly sized to minimize the amount of sediment that can escape into the water.

8. During or after dredging, the removed material may not be temporarily or permanently placed in a wetland, floodway or below the ordinary high water mark of a navigable waterway.

9. All equipment including, but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, sheet pile, and pumps, shall be adequately cleaned to remove invasive and exotic species prior to being used.

Note: Invasive and exotic species are listed on the department's website at www.dnr.wi.gov.

(g) *Standards for maintenance dredging in established drainage districts.* Dredging to maintain a district drain which is part of a drainage district established under ch. 88, Stats., is eligible for a general permit subject to the following limitations:

1. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located in an area of special natural resource interest as defined in s. 30.01(1am), Stats., and identified by the department in s. NR 1.05.

2. Unless the department previously authorized the project under s. 30.20, Stats., the dredging may not be located where there are public rights features as defined in s. NR 1.06.

3. Dredging shall comply with s. DATCP 48.32.

4. Maintenance of the district ditch and any structures in the ditch shall comply with the established specifications and compliance plan under ss. DATCP 48.20 and 48.22.

5. Dredging may not exceed the volume or extend beyond the dimensions of the previously constructed dredge project.

6. The total amount of material removed from the area shall be less than 3000 cubic yards or, if greater than 3000 cubic yards, a previous environmental assessment or environmental impact statement shall meet the requirements of s. NR. 150.20(2)(c).

7. The applicant shall provide information that the dredged material does not contain any hazardous substance as follows:

a. Through the collection and laboratory analysis of the dredged material in compliance with ch. NR 347; or

b. Through the review of historical dredge material information from the vicinity of the proposed project that was collected and analyzed in accordance with ch. NR 347; or

c. By assessing the potential for hazardous substances to be present based upon the characteristic of the watershed, industrial and municipal discharges to the waterbody and dredge material data from similar waterways.

8. Bottom materials shall be removed and transported by equipment which is designed and properly sized to minimize the amount of sediment that can escape into the water.

9. During and after dredging, the removed material may not be temporarily or permanently placed in a wetland, floodplain or below the ordinary high water mark of a navigable waterway.

10. All equipment used for the project shall be adequately de-contaminated for invasive and exotic species prior to being used. All equipment that comes in contact with infested waters including, but not limited to, tracked vehicles, barges, boats, silt or turbidity curtain, sheet pile, and pumps shall be thoroughly disinfected.

(h) Activities which do not meet the standards in par. (d), (e), (f) or (g) or a general permit issued by the department shall require an individual permit or contract.

(3) INDIVIDUAL PERMITS. (a) *Procedures.* Individual permits shall be processed according to the procedures in ch. NR 310.

(b) *Applicable activities.* Any dredging which is not exempt under sub. (1), is not authorized by a general permit under sub. (2), or is located in an area of special natural resource interest require authorization by an individual permit pursuant to s. 30.20(1), Stats.

(c) *Standards.* Dredging which meets the standards in s. 30.20(2), Stats. may be authorized under an individual permit or contract. All applicable provisions in chs. NR 346 and 347 shall be met.

NR 345.05 Enforcement. (1) Noncompliance with the provisions of ss. 30.20 and 30.206, Stats., this chapter, or any conditions of an exemption, general permit or individual permit issued by the department, constitutes a violation and may result in a forfeiture. If the activity is a general permit under s. 30.206, Stats., the failure to follow procedural requirements may not, by itself, result in abatement of the activity. Unless there is good cause shown, the department may seek abatement of any activity in violation of ss. 30.20 and 30.206, Stats.

(2) General permits may not be issued for after-the-fact permit applications. When an after-the-fact permit application has been filed with the department, the department shall follow the procedures in ch. NR 301 for violations.

(3) Any reference in ss. 30.15, 30.292, 30.294 and 30.298, Stats., to any provision of ch. 30, Stats., shall include any rules promulgated under that provision.

(4) No person may remove material from the bed of a navigable waterway where the activity is not eligible for an exemption, authorized by a general permit or individual permit issued under this chapter, or otherwise authorized under this chapter.